

RAILWAY FINANCE AUTHORITY[765]

Prior to 6/3/87, Railway Finance Authority[695]. Under Iowa Code section 7E.7(4) "The Iowa railway finance authority shall be considered part of the department of transportation."

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CHAPTER 1
ORGANIZATION AND OPERATION
[Prior to 6/3/87, Railway Finance Authority[695], Ch 1]

765—1.1(327I) Definitions. The definitions in Iowa Code chapter 327I are hereby adopted. In addition, the following terms when used in these chapters of rules shall have the following meanings:

Applicants. Direct users or providers of railway facilities for freight transportation services, and cities, counties, or other financially responsible persons.

Discount rate. The rate at which cash flows are time adjusted; the required rate of return on an investment.

IRFA. The Iowa railway finance authority.

Present value. The current worth of the future cash flows of an asset.

Project. A specific plan or design for rehabilitation, acquisition, construction, reconstruction, repair, alteration, improvement, or extension of railway facilities.

Project life. The period over which benefits and costs are measured and discounted, a period representing the expected life of the assets acquired or improvements made by the project.

Secretary. Director of transportation.

Staff. The staff of the department of transportation.

This rule is intended to implement Iowa Code sections 327I.4 and 327I.6.

765—1.2(17A) Location. The authority is located at 800 Lincoln Way, Ames, Iowa 50010; telephone (515)239-1367. Business hours are 8 a.m. to 4:30 p.m. Monday through Friday, excluding legal holidays.

This rule is intended to implement Iowa Code section 17A.3.

765—1.3(327I) The board. The board consists of five members appointed by the governor to serve staggered six-year terms. The board functions under the leadership of a chairperson with the director of transportation serving as secretary of the board.

1.3(1) Officers. At the first meeting after May 1 of each year, the board shall elect from among its members a chairperson and vice chairperson. At any time the board may elect other officers as it determines.

1.3(2) Vacancies.

a. If the position of chairperson becomes vacant, the vice chairperson shall immediately assume the position. If the vice chairperson is unable to succeed the chairperson, the board shall elect from among its members a new chairperson.

b. If the chairperson is absent from a meeting, the vice chairperson shall preside.

c. If the position of vice chairperson becomes vacant, the board shall elect from among its members a new vice chairperson.

d. If the chairperson is unavailable or unable to act on behalf of the board, the board may assign a specific authority or responsibility to the vice chairperson or to another member.

1.3(3) Chairperson's powers and duties.

a. The chairperson shall preside at all meetings, call members to order, preserve order and decorum, announce results of all votes, and follow established procedures.

b. If the chairperson desires to make or second a motion, the chair shall be relinquished until the question is resolved.

This rule is intended to implement Iowa Code section 327I.6.

765—1.4(21,327I) Board meetings.

1.4(1) Board meetings shall be held at the call of the chairperson or when two board members so request.

1.4(2) Board meetings shall be conducted in accordance with Iowa Code chapter 21.

1.4(3) Any member may request a roll call vote on any question.

1.4(4) A quorum shall consist of three board members. The affirmative vote of not less than three board members is necessary for any action taken by the board.

1.4(5) Official acts of the board shall be by written order or resolution and may be introduced and adopted upon the request of any board member during a meeting.

1.4(6) The secretary shall record all acts of the board at all meetings, shall distribute copies of the minutes to the members, and shall present the minutes to the board for approval at the next meeting.

1.4(7) Cases not covered by these rules shall be governed by Robert's Rules of Order Newly Revised (1981 edition), except that all motions shall require a second.

This rule is intended to implement Iowa Code chapter 21 and section 327I.6.

765—1.5(21,327I) Public participation at open meetings. It is board policy to allow the public an opportunity to present their views at board meetings.

1.5(1) Request. Persons who wish to present their views at a board meeting shall send a written request to the secretary at the address given in rule 1.2(17A). The request shall outline the subject to be addressed at the meeting, the requested amount of time for presentation, and the name, address, and telephone number of the person to contact.

1.5(2) Response. The secretary shall grant, defer, or deny the request and shall advise the contact person.

a. If the request is granted, the secretary shall prepare the agenda and notify the contact person of the time and place for the presentation to the board.

b. If the request is deferred or denied, the secretary shall notify the contact person of the reason for the deferral or denial. The requester may appeal the deferral or denial to the board in writing. The board may overrule the secretary and schedule the presentation.

c. In all cases, notification shall be by telephone, followed by a confirming letter.

1.5(3) Registration. On the date of the board presentation, each person scheduled to make a presentation, or each member of a delegation, shall sign a registration sheet.

1.5(4) Public forum. A public forum shall be scheduled at each regular meeting to allow the public an opportunity to address the board on any issue concerning the financing of railway facilities. Time for individual presentations during the public forum may be allocated by the chairperson to give all persons wishing to speak an opportunity to do so.

This rule is intended to implement Iowa Code chapter 21 and section 327I.6.

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CHAPTER 2
ITEMS OF GENERAL APPLICABILITY
[Prior to 6/3/87, Railway Finance Authority[695], Ch 2]

765—2.1(22) Public records. All records of the authority are public records subject to the provisions of Iowa Code chapter 22.

This rule is intended to implement Iowa Code chapter 22.

765—2.2(4) Severability. If any word, phrase, sentence, paragraph, section, or part of any rules adopted by the board in accordance with the provisions of Iowa Code chapter 17A is adjudged by the courts to be invalid, the judgment shall not affect, impair, or invalidate the remainder of the rules.

This rule is intended to implement Iowa Code section 4.12.

765—2.3(17A) Rule making, petitions for rule making, declaratory rulings.

2.3(1) The provisions of 761—10.2(17A), 761—10.3(17A), and 761—10.4(17A), IAC, shall apply to all rule making, petitions for rule making, and declaratory ruling activities of the authority except that:

- a.* References to the transportation commission or to the commission shall mean the board.
- b.* References to the department of transportation or to the department shall mean the authority.

2.3(2) References to the director of transportation or to the director which are found in 761—Chapter 10, shall mean the secretary of the board.

This rule is intended to implement Iowa Code sections 17A.1 to 17A.7, 17A.9 and 17A.19.

[Filed 12/18/80, Notice 10/29/80—published 1/7/81, effective 2/11/81]

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CHAPTER 3
FINANCIAL ASSISTANCE
[Prior to 6/3/87, Railway Finance Authority[695], Ch 3]

765—3.1(327I) Types of financial assistance. A number of financial assistance programs are available for projects.

3.1(1) Loans.

a. The authority may fund acquisition projects to a maximum of 80 percent with the loan maturity not exceeding 40 years.

b. The authority may fund other railway projects to a maximum of 90 percent with the loan maturity not exceeding 40 years.

c. The authority may make interest-bearing or interest-free loans.

d. The loan interest rates for money loaned from the sale of tax exempt bonds, including industrial revenue bonds issued by the authority, shall not be set in excess of the yield permitted by Section 103(c), Internal Revenue Code, as defined in Iowa Code subsection 422.3(5) and the treasury regulations promulgated thereunder.

3.1(2) Restrictions on an interest-free second loan. The board shall not approve an applicant's request for an interest-free second loan for a rehabilitation project in an amount greater than that repaid on the original loan. One-half of the amount of the interest-free second loan repaid to the authority shall be credited by the authority to the railroad assistance fund established in Iowa Code section 327H.18. The restrictions in this subrule do not apply to first loans or interest-bearing second loans.

3.1(3) Other financial assistance.

a. The board may approve a grant for a project.

b. The board may acquire an equity interest or enter into a limited partnership with an applicant.

c. The board may approve a loan or lease subsidy or a loan or lease guarantee. A loan or lease subsidy shall be in the form of a grant or loan to the applicant whereby the authority pays all or a portion of the payments due on a loan or lease extended to the applicant by another person. A loan or lease guarantee shall be in the form of a conditional grant or loan to an applicant whereby the authority guarantees all or a portion of the loan or lease payments due on a loan or lease extended to the applicant by another person.

d. The board may approve for a project any combination of types of financial assistance specified in this chapter of rules or in Iowa Code chapter 327I.

3.1(4) Equity participation by the applicant. Applicants for financial assistance for all acquisition projects shall contribute in the form of equity a minimum of 20 percent of the amount received from the authority.

This rule is intended to implement Iowa Code chapter 327I.

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CHAPTER 4 PROJECTS

[Formerly Ch 3; Ch 4 IAB 5/25/83]

[Prior to 6/3/87, Railway Finance Authority[695], Ch 4]

765—4.1(17A,327I) Project application. Applicants desiring authority consideration for financial assistance of a project shall obtain application Form 890003 from: Iowa Railway Finance Authority, 800 Lincoln Way, Ames, Iowa 50010. The application shall be submitted to the secretary of the authority at the same address.

4.1(1) Additional required information.

a. Each application shall contain a clearly identifiable statement of the percent of total projected carload traffic for the project which the applicant projects will come from the movement of agricultural commodities and fertilizer as defined by the Standard Transportation Commodity Code.

b. Each application shall also state whether the five-year historical average traffic density on the line is less than or greater than five million gross ton miles per mile per year. A line with less than five million gross ton miles per mile per year historical average traffic density shall be considered a branch rail line under Iowa Code section 327I.23.

4.1(2) Pledges from project participants. If an applicant requests that the authority provide financial assistance through the issuance of obligations, or if the applicant requests a lease guarantee, the applicant shall submit with the application proposed pledges and liens from project participants as follows:

a. Monetary pledges from project participants must be sufficient, together with other moneys available to the authority, to allow the authority to either retire obligations proposed to be issued by the authority to assist the project or to make all payments on leases guaranteed by the authority to assist the project.

b. Liens proposed to be held by the authority must include liens against the assets of the project and against the assets of each participant in the project to the extent of that participant's pledged obligation. In this paragraph, a "pledged obligation" shall not include a grant or equity participation proposed to be provided to the project at its inception, but shall only include a pledged obligation of a future nature.

c. In this subrule, "project participant" means any proposed participant in a financial assistance contract with the authority.

4.1(3) The applicant shall notify the railroad or railroad's trustee presently owning, operating, or leasing any portion of the affected rail facility of the submission of an application for funding to the authority.

4.1(4) The authority shall notify the applicant of the completeness of the application by certified mail within 30 days of receipt.

4.1(5) For an incomplete application, the notice shall outline the additional information needed.

a. The applicant shall have 45 days from the date of the notice to respond.

b. The secretary may grant 30-day extensions when deemed necessary and when requested by the applicant.

c. If all the requested information is not received by the deadline, the incomplete application shall be returned to the applicant and may be resubmitted as a new application.

d. If all the requested information is received by the deadline, the authority shall notify the applicant by certified mail within ten working days that the application shall be processed as complete.

4.1(6) An applicant may appeal to the board a staff decision to return an incomplete application.

a. The appeal to the board shall be in accordance with rule 765—1.5(21,327I).

b. The board shall rule on the appeal on the day of the applicant's appearance.

c. If the board rules the application is complete, the staff shall process the application.

d. If the board rules the application is incomplete, the applicant may submit a new application.

4.1(7) An applicant may withdraw an application at any time.

This rule is intended to implement Iowa Code sections 17A.33 and 327I.7.

765—4.2(327I) Public announcement. An announcement of each application shall be published within 14 days of receipt.

4.2(1) The announcement shall include a description of the project and the date on which the application was received.

4.2(2) The announcement shall be published in one newspaper of statewide circulation and in one newspaper circulated in the area of the project.

4.2(3) Written public comments shall be accepted by the authority for 30 days following the date of publication.

This rule is intended to implement Iowa Code section 327I.7.

765—4.3(327I) Project analyses. The staff shall prepare an economic analysis and a financial analysis of each complete application and submit a recommendation based on these analyses to the authority.

4.3(1) *Economic analysis.* The economic analysis shall determine the net present value of the proposed project. The net present value shall be determined by subtracting the present value of project costs from the present value of benefits to the public, user(s), and carrier(s).

a. Public benefits shall include the savings in road construction and maintenance costs resulting from diverting traffic from public roads to the railroad.

b. User benefits shall include the change in net income the user(s) could accrue if rail service is maintained or improved versus if rail service is terminated or unimproved.

c. Carrier benefits shall include the change in net income (excluding depreciation of those project costs required in paragraph “d”) a carrier(s) could earn operating a facility if rail service is maintained or improved versus if rail service is terminated or unimproved.

d. Project costs shall include costs occurring from the use of labor, land, materials, and equipment directly attributable to the project. These costs shall be reduced by the value of salvageable materials to be replaced during the project.

e. The factors entered into the economic analysis shall be computed from the point of view of the entire state.

f. All benefits and costs shall be discounted to present value.

4.3(2) *Financial analysis.* The financial analysis shall be based upon, but not limited to, an examination of the projected cash flow of the project and the variable factors which may affect the cash flow. The analysis shall address the following questions:

a. What are the factors (e.g., number of carloads, interest rates, amount of equity to be invested) which may vary significantly enough to affect the cash flow and viability of the project, and what may be the projected effect upon cash flow of these variations?

b. Can the project reasonably be expected to generate enough cash flow to repay a commercial loan, in which case financing by IRFA may not be necessary?

c. Can the project reasonably be expected to generate enough cash flow to cover all operating expenses, including an allocation for maintenance-of-way sufficient to maintain the property, where applicable?

d. Can the project reasonably be expected to generate enough cash flow above and beyond operating expenses to repay an IRFA loan?

e. If the project cannot reasonably be expected to be able to repay a loan, would the project be financially viable with an IRFA grant?

f. If a project is found to have a reasonable chance of being financially viable with IRFA assistance, how much of that assistance is necessary and what financing terms are necessary to achieve viability?

g. Are the total public benefits (public benefits plus user benefits) from the project greater or less than the total public costs (all costs of proposed financial assistance from government and users)?

4.3(3) *Recommendation.* The staff shall not recommend funding for a project unless all of the following conditions are satisfied:

a. The net present value of the proposed project is positive, or the benefits to the public, user(s), and carrier(s) which have no determinable precise monetary value are judged by staff to outweigh a negative calculation. The benefits with no determinable precise monetary value may include, but are not limited to, the following:

(1) Safety impacts; e.g., reduced likelihood of accidents involving personal injury or hazardous cargoes.

(2) Economic development impacts; e.g., increase in employment opportunities or increase in industrial development.

(3) Environmental impacts; e.g., changes in ambient noise levels or air quality.

b. The staff finds the application is consistent with the policies and plans of the state transportation commission, as submitted to the general assembly.

c. The financial analysis indicates the applicant is financially responsible and able to undertake the project.

This rule is intended to implement Iowa Code subsections 327I.7(6), 327I.7(7), 327I.7(8), and 327I.8(2).

765—4.4(327I) Board action.

4.4(1) The staff shall present the complete application and the recommendation to the board at a public meeting within 90 days after the application is considered complete under rule 4.1(17A,327I). The board shall receive copies of the application and the recommendation at least seven days before the presentation date.

4.4(2) The board shall approve or deny the complete application within 30 days after the presentation.

4.4(3) If the application is approved, the board shall direct the secretary to prepare the necessary contracts to be submitted to the board for approval.

4.4(4) If the board denies the application, it may be submitted as a new application. The board shall provide the applicant with written reasons for denial of an application.

This rule is intended to implement Iowa Code subsections 327I.7(6), 327I.7(7), and 327I.7(8).

765—4.5(327I) Contract approval.

4.5(1) After the board has approved the application for financial assistance, the staff shall negotiate a contract with the applicant.

4.5(2) The contract negotiations shall be completed within six months after board approval of the application or the application shall be considered rejected.

4.5(3) Prior to execution of the contract, the authority may perform a preaudit evaluation of the loan applicant. The preaudit evaluation may include, but shall not be limited to, the following:

a. An examination of the applicant's accounting methods and procedures to determine the applicant's ability to segregate and accumulate costs to be charged against the project and to be charged for subsequent maintenance of the rail line.

b. An examination of the applicant's cost factors to ensure their propriety and allowability.

c. An examination of any other general information which might be pertinent or necessary in determining the applicant's auditability.

4.5(4) If the preaudit evaluation shows that revisions are necessary to ensure the applicant's auditability, the revisions shall become an obligation of the applicant in the contract.

4.5(5) The staff shall present the proposed contract to the board for final approval.

This rule is intended to implement Iowa Code subsections 327I.7(6), 327I.7(7), and 327I.7(8).

765—4.6(327I) Project monitoring. Each project shall be monitored as outlined in the contract.

This rule is intended to implement Iowa Code subsections 327I.7(6), 327I.7(7), and 327I.7(8).

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¹ Effective date of 6/29/83 on 4.3(3)“a” delayed 70 days by the Administrative Rules Review Committee on 6/14/83.

CHAPTER 5
RAILROAD REVOLVING LOAN AND GRANT FUND PROGRAM

765—5.1(327H,327I) Introduction. The railroad revolving loan and grant fund program provides funding in the form of loans and grants for railroad-related improvement projects that spur economic development and job growth. The railroad revolving loan and grant fund is established in Iowa Code section 327H.20A as amended by 2005 Iowa Acts, House File 875, section 31, and is under the control of the Iowa railway finance authority (IRFA).

765—5.2(327H,327I) Definitions.

“Rail facilities” includes railroad main lines, branch lines, switching yards, sidings, rail connections, intermodal yards and highway grade separations.

765—5.3(327H,327I) Information. Information may be obtained from IRFA staff at the following address: Iowa Railway Finance Authority Coordinator, Office of Rail Transportation, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; telephone (515)239-1140. Completed applications shall be submitted to this address.

765—5.4(327H,327I) Purpose of program. The purpose of the railroad revolving loan and grant fund program is to provide loans and grants for railroad-related improvement projects that will provide benefits to Iowa in terms of direct economic development and job growth or through economic benefits derived from railroad transportation service improvements.

765—5.5(327H,327I) Funding.

5.5(1) The IRFA board is responsible for determining the projects to be funded and the amount of funding for each project.

5.5(2) The minimum amount of matching funds required of an applicant is 20 percent of the project cost.

5.5(3) No more than 50 percent of the total funds available in any year shall be awarded in the form of grants.

765—5.6(327H,327I) Project criteria.

5.6(1) All rail facilities are eligible for project funding except:

- a. At-grade crossing surface repair or replacement unless the repair or replacement is a part of railroad line construction or reconstruction.
- b. Signals, gates or other crossing protection unless the crossing protection is a part of new railroad line construction.

5.6(2) An applicant must demonstrate that its project will provide benefits to Iowa in terms of direct economic development and job growth or through economic benefits derived from railroad transportation service improvements.

765—5.7(327H,327I) Applicant eligibility. A railroad company, railroad user, city, county, metropolitan planning organization, regional planning affiliation, or any other entity with an interest in a rail transportation improvement is eligible to apply for funding. Joint applications are allowed and encouraged, but the applicants shall designate one contact person.

765—5.8(327H,327I) Eligible and ineligible project costs.

5.8(1) Eligible costs. Activities or items eligible for funding include, but are not limited to, the following:

- a. Modernization, upgrading or reconstruction of existing rail facilities.
- b. Construction of new rail facilities.
- c. Railroad bridge and culvert modernization, replacement or removal.
- d. Right-of-way acquisition costs.

5.8(2) Ineligible costs. The following activities or items are ineligible for funding:

- a. Contract administration.
- b. Freight car or locomotive lease, purchase or repair.
- c. Feasibility studies, environmental studies or major investment studies related to a railroad improvement project.
- d. Refinancing of a completed project that would have otherwise qualified under this chapter.

765—5.9 Reserved.

765—5.10(327H,327I) Project application.

5.10(1) Submission. Applications may be submitted at any time.

- a. The applicant shall submit an original and two copies of a project application to the address in rule 765—5.3(327H,327I).
- b. If an application is incomplete, IRFA staff shall return the application to the applicant to be resubmitted when it is complete.
- c. An application may be withdrawn at any time after submission.

5.10(2) Contents of application. Each application shall contain the following:

- a. The applicant's name, address, telephone number, facsimile number and E-mail address (if available) and the name of a designated contact person for the project.
- b. A detailed description of the project proposed for funding, including a map or sketch plan.
- c. The justification for the project, including the following information:
 - (1) The need for and purpose of the project.
 - (2) How the project will impact the local and state economies, including the number of new jobs to be created, the number of potential jobs that may be created and the number of jobs to be retained as a result of the project.
 - (3) The long-term growth and development potential of the area or industry to be supported and the direct and indirect economic, transportation, and environmental impacts of the project.
- d. An itemized estimate of all project costs and the proposed match or cost sharing based on the requested funding. A detailed financial plan to explain the funding for the entire project should be included, along with any associated development costs.
- e. A time schedule for the completion of the project.
- f. The total amount of loan and grant funds requested.
- g. If loan funds are requested, the proposed loan term and interest rate and a detailed description of the applicant's ability to repay the loan. IRFA staff may require the applicant to provide audited financial statements for the past two years plus a current balance sheet and profit/loss statement for the entity that is to repay the loan. If the entity that is to repay the loan is a new entity, the applicant shall, instead, provide a pro forma balance sheet and pro forma profit/loss statement.
- h. If requested by IRFA staff, endorsement of the project by a local government(s) that will be affected by the project and a description of how the project will impact the local government's transportation and economic development plans.

765—5.11(327H,327I) Project evaluation and approval.

5.11(1) Staff review. IRFA staff shall review the contents of each application for completeness. IRFA staff may visit the project site and may require the applicant to verify the information in the application. After IRFA staff determines that the application is complete, the staff shall develop a funding recommendation and shall schedule the project for submission to the IRFA board for approval.

5.11(2) Board evaluation. The IRFA board shall be responsible for selecting and determining the funding for each project, subject to the availability of railroad revolving loan and grant funds. The IRFA board may fund all or part of a project and may make funding dependent upon the applicant's adherence to a time schedule or fulfillment of specified conditions, including job creation commitments.

5.11(3) Board approval. In making its decision to fund a project, the IRFA board may consider the railroad transportation service benefits of the project, the economic development benefits of the project,

the applicant's total capital investment, the number of direct and indirect jobs to be created or preserved by the project, the financing requested, an analysis of public benefits versus public costs, and other potential impacts or benefits of the project.

765—5.12(327H,327I) Project agreement and administration.

5.12(1) *Agreement.* After the IRFA board has approved funding for a project, IRFA staff shall negotiate and execute an agreement with the applicant. IRFA staff shall administer the agreement.

a. The agreement shall specify the scope of the project, the approved funding level, and other conditions for project funding.

b. As applicable, the agreement shall address responsibilities for project design, right-of-way acquisition, contracting, construction and materials inspection; documentation required for reimbursement of project costs; audit requirements; and maintenance of the completed project.

5.12(2) *Reimbursement.* The applicant will be reimbursed for eligible project costs in accordance with the agreement.

5.12(3) *Audits.*

a. Prior to execution of the agreement, IRFA staff may perform a preaudit evaluation of the applicant or others as defined in the agreement. A preaudit evaluation typically includes an examination of accounting methods to determine the applicant's ability to segregate and accumulate costs to be charged against the project, and an analysis of costs factors to ensure their propriety and allowability.

b. IRFA staff may conduct a final audit of all project costs.

5.12(4) *Default.* IRFA staff may revoke a funding commitment, seek repayment of funds loaned or granted or take both actions if the applicant fails to fulfill the terms of the agreement.

These rules are intended to implement Iowa Code section 327H.20A as amended by 2005 Iowa Acts, House File 875, section 31, and section 327I.8 as amended by 2005 Iowa Acts, House File 875, section 33.

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